

International Mobile Satellite Organization

ADVISORY COMMITTEE

Twelfth Session

3 – 4 October 2005

Agenda item 4

IMSO/AC/12/2

Origin: Secretariat

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**DRAFT REFERENCE PUBLIC SERVICES AGREEMENT
AND AMENDMENTS TO IMO RESOLUTION A.888**

1. BACKGROUND

At its Eleventh Session, the Advisory Committee agreed most of the Clauses of the draft Reference PSA, but noted that a few items remained in square brackets, as indicated in Annex V to the Report of that Session. The Committee noted that the Director will continue to work with IMO and to consult with Inmarsat and potential new providers of mobile satellite services for the GMDSS to resolve outstanding issues in relation to the draft Reference Public Services Agreement, and will report to the next Session of the Committee. The Committee also noted that it would finalize its consideration of the text of the Reference Public Services Agreement at its next meeting, inviting the Director to submit the document to the Assembly for adoption.

2. CONSULTATIONS WITH SERVICE PROVIDERS

The Secretariat has met with Mr Vos of Inmarsat and discussed the outcome of the Eleventh Session of the Advisory Committee in relation to the PSA. Mr Vos was invited to consult with other members of the informal group of potential providers in this respect. However, as at the time of issuing this document, no comments have been received.

3. CONSULTATIONS WITH IMO SECRETARIAT

3.1 As noted by the Advisory Committee, the Director and the Head of Technical Services have met with members of the IMO Secretariat to discuss both the draft

Reference Public Services Agreement and the amendments to IMO Resolution A.888(21).

3.2 As members of the Committee are aware, the IMO MSC has requested IMSO to agree to undertake the oversight of multiple satellite operators providing GMDSS services, and the IMSO Assembly has already agreed to do so, subject to appropriate changes to the IMSO Convention being adopted by the IMSO Assembly in December 2005.

3.3 Subject to amendment of the IMSO Convention, the new oversight regime for GMDSS satellite services will be based on a revised IMO Assembly resolution A.888(21) and a new Reference Public Services Agreement between IMSO and each GMDSS satellite service provider.

4. **CONCLUSIONS**

4.1 With this background in mind, informal consultation between the Secretariats of IMO and IMSO concerning the development of text comprising the duties and responsibilities of both organizations for the GMDSS regime has led to the following conclusions:

.1 Thorough analysis of the texts of the constituent instruments of IMO and IMSO clearly indicate that:

- (a) the IMSO Convention gives IMSO the direct right to oversee commercial mobile satellite communications operator(s) (Article 4 applies); the IMO Convention does not provide the same scope for IMO;
- (b) the IMSO Convention provides IMSO with the legal mandate to conclude contractual arrangements (such as the PSA) with a private company (Article 4 again applies); the IMO Convention does not provide the same scope for IMO; and
- (c) the IMSO Convention specifically exonerates IMSO from liability (Article 11 applies); the IMO Convention does not provide such a protection clause.

.2 The practical consequences of these differences in the legal status of the two organizations are significant:

- (a) IMSO cannot oversee satellite communications operators **on behalf of IMO** nor share such responsibility with IMO because IMO has no legal mandate to do so; IMSO can carry out such oversight solely on the basis of the IMSO Convention, and take full responsibility for its actions, as at present;
- (b) IMO policies, standards and regulations do not apply directly to the satellite communications operator(s); they will apply to the operator(s) on the basis only of contractual arrangements (PSA) between IMSO and each satellite communications operator, as is done in respect of Inmarsat plc; and
- (c) whilst IMSO could conceivably be sued by a satellite communications operator, IMSO Parties are not legally liable for their actions nor for the consequences of those actions; however, IMO Parties would be liable when sued.

.3 In the light of the above analysis, and considering that IMO has already decided that the international oversight provided by IMSO of GMDSS in respect of Inmarsat plc shall be extended to all other potential providers of the GMDSS, it is essential to establish a CLEAR CUT principle between the regulatory functions of IMO and the oversight functions of IMSO, as envisaged in the constituent instruments of both organizations, and to reflect this principle harmoniously in the IMSO Reference Public Services Agreement and IMO Resolution A.888.

.4 In practical terms, this clear cut principle means that IMO must continue to confine its role as regulator to the establishment of standards and regulations within which IMSO and the operators would work, and may choose, through the Maritime Safety Committee, to establish relevant policies and express general views on the subject, leaving the implementation of those policies, standards and regulations to IMSO.

4.2 This has been reflected in the text of the draft Reference Public Services Agreement (which is attached) and the amendments to IMO Resolution A.888. It is hoped that IMO's work on the revision of Resolution A.888 will be sufficiently

advanced for an early draft to be available for the information of the Advisory Committee at this Session.

5. ACTION REQUIRED

The Committee is requested to finalize the text of the draft Reference Public Services Agreement, for adoption by the Eighteenth (Extraordinary) Session of the Assembly to be held from 14 to 16 December 2005.

**DRAFT REFERENCE
PUBLIC SERVICES AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

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